

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS PUBLIC SERVICE)	
COMPANY and UNION ELECTRIC)	
COMPANY)	
)	Docket No. 02-0656
Petition for approval of tariff sheets implementing)	
revised Market Value Index methodology.)	
COMMONWEALTH EDISON COMPANY)	
)	Docket No. 02-0671
Proposed revision of Rider PPO (Power Purchase)	
Option - Market Index), Rate CTC (Customer))	
Transition Charge) and Rider ISS (Interim Supply)	
Service), and to establish Rider CTC - MY)	
(Customer Transition Charge - Multi-Year)	
Experimental). (Tariffs filed on October 1, 2002))	
ILLINOIS POWER COMPANY)	
)	Docket No. 02-0672
Proposed establishment of Rider MVI II, Market)	(Cons.)
Value Index II. (Tariffs filed October 1, 2002)))	

REPLY BRIEF ON BEHALF OF THE
ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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I. Introduction

IIEC will respond to certain arguments and position in this Reply Brief. Its failure to address an argument or position of any party should not be considered an endorsement, acceptance or approval of such an argument or position.

A. Statutory Provisions

In its opening brief and citing Section 16-112(a) of the Public Utilities Act (the “Act”) (220 ILCS 5/16-112(a)), IP takes the position that the floating MVI adder and its initial proposal to adjust its MVI in this case, both set market values “. . . as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and customers in its service area buy, electric power and energy.” IP Opening Br. at 3. It is interesting to note that this is essentially the first and only time IP suggests the floating adder approach and its original proposal are consistent with the requirements of Section 16-112(a) of the Act. Nowhere in IP’s brief does it explain how or why the floating adder approach is a function of an exchange traded or other market traded index. Presumably, IP does not discuss this issue further because, as is clear from a reading of IP’s brief, the market values produced under the floating adder approach would be primarily a function of estimated levels of customer switching and subjective judgments as to the market activity of the retail electric suppliers (RES) registered to do business in the IP service territory, not a function of changes in an exchange traded index, etc.

IP is critical of IIEC and other parties who, in IP’s opinion, ask for adders unrelated to the market value at issue in this proceeding. IP suggests the market value at issue is “...the value of power and energy which customers buy and utilities sell.” IP Opening Br. at 26. IP has failed to explain in its

brief exactly how or why increases or decreases in the level of customer switching¹ or increases or decreases in the level of marketing activity by RESs establish or determine the value of power and energy which customers buy and utilities sell.

IP also points to the language in Section 16-112 of the Act, which it claims forms the basis for its multi-year offer in this proceeding and which it claims relieves it of the obligation to provide tariffed service to customers electing the multi-year option. IP Opening Br. at 3-4. IIEC disagrees with portions of IP's statutory interpretation and will describe, in greater detail, the basis for such disagreement below.

C. Summary of Position and Recommendations

In its summary of positions and recommendations, IP suggests every party in this case, with the possible exception of IIEC, argues that some changes are needed to reduce the level of inherent error in determining market value. IP Opening Br. at 7. IIEC does agree that some changes are needed to the MVI tariffs as they currently exist and as they are proposed by various utilities in this proceeding. However, IIEC believes the discussion and debates over modification of MVI tariffs do not address the primary problem with the electric market structure in Illinois, which is the existence of the transition charge.

Modification of MVI tariffs is nothing more than an attempt to treat the symptoms of an illness as opposed to treating or addressing the underlying disease. Errors, residuals, disagreements,

¹Or more precisely, how the level of switching among a particular group of customers (those whose anniversary dates fall within a prior two month window) has any bearing on the value of power and energy at which a separate group of customers is willing to buy and which uses a different base MVI in the first instance. See IP Ex. 1.8 Rider TC, Page 1 of 2, Appendix 4 - Adder Calculation and IP Ex. 1.9 2nd and 3rd pages, as they relate to changes in the floating adder.

miscalculation, overstatement, understatement etc. of market values are merely symptoms of the economic disease caused by the existence of transition charges which are designed to compensate utilities for generating assets they no longer own. *See* McDermott Tr. 79-83. *See* IIEC Ex. 1.0 at 3. Customers are told on the one hand that market value represents the price at which they can buy and at which utilities can sell electric power and energy. On the other hand, RESs argue that because they cannot sell at that market value it is necessary to adjust the value upward to a level at which they can sell electric power and energy competitively. Thus, in order to purchase electricity from RESs, customers are asked to agree to higher market values/prices. This rather unique approach to creating a competitive market for electricity is necessitated by the need to calculate the transition charge, which utilities are permitted to collect under Section 16-108(f) of the Act. 220 ILCS 5/16-108(f). Thus customers are being asked to agree to increases, in what purports to be the market price of electricity, in order to “. . . benefit in an equitable and timely fashion from lower costs for electricity that result from retail and wholesale competition. . . .” *See* 220 ILCS 5/16-101A(e). This need, to increase prices in order to obtain lower prices, is a function of the transition charge. The transition charge creates perverse incentives and prevents customers from accessing the currently low prices for electricity in the marketplace.

In the introductory portion of its Opening Brief, IP argues that its Memorandum of Understanding (MOU) is supported by suppliers, customers and the utility. Therefore the incentive to bias market values high or low is moot. IP Opening Br. at 7. IIEC believes that RES wish to increase market value in order to create headroom. IIEC believes IP wishes to increase market value to drive customers off the PPO and possibly to create switching statistics, which would justify declaring SC24 or other industrial

rates competitive under Section 16-113. The customer group supporting the MOU does so because it believes the current method of calculating transition charges does not reflect Illinois retail market prices and therefore nullifies electric competition. *See* Illinois Energy Consortium Initial Br. at 11-12. If there were no transition charges, whether the method for calculating such a charge does or does not reflect retail market prices would be largely irrelevant. Transition charges are the true problem. However, there is a lack of will on the part of the General Assembly and others to address the true problem. Instead the focus of this proceeding has been on how to alleviate the symptoms of the transition charge disease. Under such circumstances, and if PPO customers in the IP service territory are not adversely affected, the IP MOU may be the least offensive option among the list of extremely poor options.

II. Proposed Adjustments or Revisions to Utility Proposals

IP argues that if its MOU is adopted, the various adjustments and revisions proposed by other parties are moot. IP Opening Br. at 12. IP argues that its floating MVI adder adjusts for all of the adjustments and revisions recommended by the parties in this proceeding. IP Opening Br. at 12. IP argues that if the MOU (floating adder approach) is not adopted, then its original proposal should be adopted, except that the capacity demand credit (CDC) would be \$9.00 per kW year (instead of \$12.00 per kW year). IP Opening Br. at 11-12.

IIEC respectfully disagrees that adoption of the MOU eliminates the necessity for a credit for the value IP derives from the multi-year transition charge option. IIEC has explained the need for such an

option in its Opening Brief. IIEC Opening Br. at 24-26.² IIEC will not repeat those arguments here. However, IIEC does note that the MOU does not measure or in any way relate specifically to multiple year RES contracts or multi-year MVI customers in measuring switching activity. Hence, even if one assumes, arguendo the MOU results in a theoretically correct market value for single year MVIs, this in no way verifies any particular value for multiple-year MVIs.

IP does argue that the RES are in error when they attempt to divine various component parts of market value. IP Opening Br. at 14. However, IP ignores the fact that in prior orders the Commission has rejected unsupported and unquantified market value adders. See Commonwealth Edison Company, Ill. C.C. Dkt. No. 99-0117, Order at 108 (Aug. 26, 1999); Illinois Power Company, Ill.C.C. Dkt. Nos. 99-0120/99-0134, Order (Aug. 25, 1999), 1999 Ill. PUC Lexis 648 at 276. In addition, other utilities in this proceeding have taken the position that each proposed change to market value should be quantified. Crumrine Tr. 766-767.

IP also argues that the Commission should be looking for the value of power and energy as defined in Section 16-112, not the value of individual additions to market value. IP Opening Br. at 14. IIEC agrees that Section 16-112 is intended to establish the market value of power and energy, not the calculation of the market value level needed to keep RESs in business or to entice them to enter a service territory or the cause of certain level of customer switching.

B. Capacity Backed Adjustment

The issue of the capacity backed adjustment remains the most elusive concept in this MVI

²Page references to IIEC's Opening Brief are taken from the electronic version on the Commission's e-docket.

proceeding, as it was in the prior MVI case. *See* Commonwealth Edison Company, et. al., Ill.C.C. Dkt. Nos. 00-0259/00-0395/00-0461 (cons.) Order on Rehearing at 169-170 (April 11, 2001). Unfortunately, the situation is not much clearer in the instant docket. Two of the utilities offer clear, albeit mutually exclusive, positions on whether the underlying MVI market data include components related to capacity. To wit:

- Commonwealth Edison Company (ComEd): “. . . the primary market data used with the market value index methodology is based on a firm delivered product protected by liquidated damages. . . . Therefore, the value of capacity is included in the price at which these products are traded.” ComEd Opening Br. at 10, citation omitted.
- Ameren: “It does not follow from higher periodic prices, however, that there is any capacity value to a financially firm product which at all times is a financial guarantee, not a physical one. The product affords no specific right to capacity – only to a price.” Ameren Opening Br. at 5.

The third utility, IP, is less clear on this subject. First, as will be discussed below, it states “[The CDC] is not an explicit charge for capacity, as that term may be used by others in the marketplace.” IP Opening Br. at 9. Then IP also argued: “It is unreasonable to believe that a base market value that is derived from a liquidated damages contract does not have some representation of the value of capacity within its price. Regardless of whether such a contract can or cannot be used for certain physical deliveries, the economic risk faced by the seller of such a contract are similar to those of a seller of physical capacity.” IP Ex. 2.1 Rev. at 43. Yet, despite these statements, IP proposes at least two

different adders for capacity, \$9.00 per kW per year and \$12.00 per kW per year, depending on whether or not its MOU is adopted. At the same time IP seeks to implement a capacity demand credit, it also proposes to eliminate a value related to planning reserves of 0.61 ¢ per kWh.

IIEC is hopeful that the Illinois Commerce Commission (Commission) can wade through the morass of opinion on this important issue. It is IIEC's belief that, whether or not a specific designation of regulatory capacity is warranted, that the underlying index products used for the MVs contain a sufficient representation of the value of capacity, with the adjustments already deemed appropriate by the Commission, and no further adjustment is warranted. None of the proponents of a capacity backed adjustment have provided a compelling reason to deviate from the status quo established in the Commission's Order on Reopening in Dockets 00-0259 et. al.

IP argues that the capacity demand credit (CDC) is an important part of the total value determination, not an explicit charge for capacity as that term may be used by others in the market place. IP Opening Br. at 9. IP explains that the CDC provides a fixed cost component for PPO service and operates similarly to demand charges in bundled tariffs. IP Opening Br. at 9. In the portion of its brief addressing adjustments to market value, IP does not provide any justification or rationale for the CDC. Instead, it argues that if its MOU is adopted the need for various adjustments to market value is eliminated. IP Opening Br. at 12. However, IP continues to propose a CDC with its floating adder approach. The CDC would be \$12.00 per KW year under that approach. IIEC addressed the CDC in its Opening Brief. IIEC Opening Br. at 6-9. However, IP's comment on the CDC does require a brief response.

If the \$12.00 per kW year is the “correct” CDC, with floating adders, how can IP’s other proposal, a CDC of \$9.00 per kW year without adders, be reasonable? IP never provides an adequate explanation. Nor does IP explain what it means when it suggests the CDC is an integral part of the total value determination, but it is not an explicit charge for capacity, as the term capacity is used in the marketplace. *See* IP Opening Br. at 9. IP appears to be attempting to distinguish its CDC from capacity charges discussed by other parties such as Ameren and the RES Coalition. *See* Ameren Opening Br. at 3-9; RES Coalition Opening Br. at 26-27. However, because IP dedicates most of its discussion on this issue to explaining what the CDC is not, and little discussion on what the CDC actually is, it fails to make persuasive argument in support of the CDC at the \$12.00 per kW or the \$9.00 per kW level.

Central Illinois Public Service Company and Union Electric Company (“Ameren”), in their efforts to defend a capacity backed adjustment to the Ameren MVI, take issue with IIEC’s arguments challenging same. Ameren’s argument is essentially that financially firm products are liquidated - damages product, and that these products or transactions do not satisfy regulatory capacity requirements. Ameren Opening Br. at 3-5. The RES Coalition support for a capacity backed adder for the Ameren MVI mirrors the arguments put forth by Ameren. RES Coalition Opening Br. at 28.

What Ameren and other parties fail to address is the fact that the MVI process currently uses certain liquidated damages contracts on a public exchange as a proxy for the value of power and energy freed up by customers leaving bundled utility service. They do not address the possibility that, in the presence of separate, explicit capacity components, the energy charge.

Staff was not persuaded by the Ameren arguments either. It concluded there was no justification for including an additional capacity charge component to Ameren’s MVI, and that Ameren has not

shown the current capacity charge component is deficient. Staff Opening Br. at 12-13. In addition, Staff was of the view the additional capacity charge will not benefit Ameren delivery service customers over at least the next two annual Applicable Period As, because Ameren will not be collecting transition charges or offering the purchase power option service during this period. Staff Opening Br. at 12; Staff Ex. 1.0 Rev. at 24-25. The status quo need not be upset in the absence of compelling reasons to do so. In Ameren's case, the need is not only less than compelling, but largely moot, given Ameren's suspension of the PPO and transition charge tariffs.

F. Residual Error Term Adjustment

The RES Coalition explains the manner in which it decided upon this particular adjustment. RES Coalition Opening Br. at 33-35. The RES Coalition claims to determine this residual adder based on a "multi-method approach" which includes a historical review, analytical "build-up," and a comparison with prices derived from a survey of the market, which is information or data derived from the ComEd service territory. RES Coalition Opening Br. at 34.

Setting aside whether the Commission can affirm an adjustment that does not quantify specific values to be included in the market value but instead relies upon an addition by subtraction approach, there has been no showing or demonstration by the RES Coalition that the approach has any direct bearing to the Ameren service territory. In fact, based on the RES Coalition's explanation of the residual error adjustment approach, the historical data or information and survey of the market is specifically related to the ComEd service territory.

Ameren also argues against the RES Coalition residual error adder proposal. Ameren takes issue with the adjustment because of the lack of any detail or information as to the origin of the \$8.00 per

MW hour value. Ameren Opening Br. at 10-11. IIEC is in agreement with the Ameren arguments objecting to the residual error adjustment being proposed by the RES Coalition.

III. Floating MVI Adder Proposal

A. To Which Utilities, If Any, Should a Floating MVI Adder Apply

IP argues that at a minimum, the floating MVI adder should apply to IP. IIEC as noted in its opening brief and as explained below has serious concerns about the floating MVI adder. However, it recognizes that such an adder, if modified, may be the least offensive alternative among a series of poor alternatives. At a minimum, IP's approach needs to be modified to ensure that it does not adversely affect PPO customers in the IP service territory.

IP argues that in adopting the floating adder, the Commission will be adopting a dynamic process that does not freeze in place the error in MVI calculations. IP Opening Br. at 16. The Commission should be aware that market value is a component part of the statutory formula used to determine the transition charge utilities are permitted to collect from customers and the price for PPO service utilities are permitted to charge customers.

IP's proposal is akin to an automatic adjustment clause. Such clauses have been permitted only in the event they include a set mathematical formula for establishing the price which is the subject of such a clause. Such clauses have been held to be "rates" within the meaning of the Act. See City of Chicago v. Illinois Commerce Commission (Ill. 1958), 150 N.E. 2d 776, 778 and 779. Here, under the IP proposal, the elements of the formula used to calculate the rate or charge are not fixed nor is the formula mathematical. The formula and the results thereof are subject to modification based on extraneous circumstances such as customer switching and market activity by RESs. Thus neither the utility, nor the

Commission, nor customers can know with any certainty the exact rate or charge, which will be produced by application of the formula. Thus, the floating adder approach may be inconsistent with the requirement that utility rates be just and reasonable and non-discriminatory.

IP also argues, under its approach for a floating adder, the market will determine the correct value via the process contained in the MOU, which permits market value to change quickly. Unfortunately, IP's brief and the testimony presented in this case are devoid of any evidence or discussion that explains how or why the level of marketing activity or the increase or decrease in customer switching, is a direct or indirect measure of the market value of power and energy that utilities sell and customers buy. Nor does any portion of the IP brief explain how the market values produced by such an approach are in fact a function of an exchange traded or other market traded index applicable to the market in which customers buy and utilities sell electric power and energy. Thus IP has failed to explain how this approach is consistent with Section 16-112(a) of the Act.³

IP also argues that its proposal will encourage competitive activity. IP Opening Br. at 16. However Section 16-112 calls for determination of market value on the basis of exchange traded indexes, etc. or the NFF process, not for determination of market value on the basis of the level needed to encourage competitive activity.⁴

IP claims that in past cases the Commission has found that switching data can be one measure

³ The RES Coalition brief is also devoid of such an explanation. *See* RES Opening Br. at 47 - 51.

⁴ ComEd, in a telling response to the floating adder concept explains that no further adders are needed to encourage switching in its service area. ComEd Opening Br. at 24. Thus even ComEd recognizes the true purpose of the floating adder is to encourage switching.

to determine if competition exists. IP Opening Br. at 17. IP's statement is based upon the Commission's recent November 14, 2002 Order in Docket No. 02-0479 directing that ComEd's Petition to Declare Rate 6L Service Competitive take effect by operation of law. IP makes this statement as an "aside." IIEC responds with the following aside. ComEd's outside expert in this case (who also testified for ComEd in Docket No. 02-0479) testified that switching statistics are not necessarily evidence of efficient competitive market where they result from an artificially high market value. McDermott Tr. 100-101. Here, it appears that the floating adder approach is designed to produce a level of switching, not to reflect the actual value of power and energy, which customers buy and utilities sell.

IP suggests that it makes sense to use customer switching as an indicator of market value under Section 16-112, because the price RESs must compete against is the market value imbedded in the PPO price. IP opines that if the price is too low the ability of the RESs to compete is hindered. *See* IP Opening Br. at 17 and 20. This statement is important in that it clearly demonstrates the MOU seeks to set market value at a level that would allow RESs to compete and not at a level that represents the price of power and energy in the market in which IP customers buy and IP sells electricity. Therefore, under IP's philosophy, the appropriate response is to increase the price to customers and deny them the PPO. Given the existence of the transition charge and the necessity to calculate market value as part of the transition charge formula, customers in Illinois now find themselves in the peculiar situation of being asked to support increases in electricity prices in order to benefit in an equitable and timely fashion from lower cost for electricity that result from competition. *See* 220 ILCS 5/16-101A(e). At the same time customers are being asked to agree to a reduction in the opportunity to achieve savings through the PPO, an option favored by that majority of delivery service customers on the IP system. *See* Commission's

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(Jan. 2003) Table 1 at iii.

Also, IP's position with regard to the MOU appears to be somewhat contradictory. On the one hand IP argues that switching statistics are indicator of market value. On the other hand, IP argues that under the MOU a lack of marketing activity by RESs will mean that adders, which would otherwise be implemented based on switching statistics, will not be so implemented. Thus, even though under IP's methodology market values would be justified in going up, the fact that RESs may have failed to make a sufficient number of marketing calls will prevent the increase in market value from being reflected in the customer's transition charge calculation. If the lack of switching to RES supply is a true measure of an increase in market value, refusing to implement an increase in market value because of lack of marketing activity appears to be contradictory.

Further IP admits that factors other than market value of power and energy affect customer switching. IP Opening Br. at 17. If this is true, how does one distinguish between the switching that is an indicator of market value and the switching that is due to other factors, in establishing market value?

In sum, the floating adder approach has significant problems,⁵ but it may be that it is the best option available given the lack of desire to address the true barrier to competition, the transition charge. In the case of IP the floating adder approach should not be implemented in a way that harms PPO customers. *See* IIEC Opening Br. at 20-21.

⁵Staff has identified a number of other concerns in its opening brief. *See* Staff Opening Br. at 25-27.

C. Incremental Changes

IP argues the incremental changes in market value associated with its floating adder approach and the limits imposed upon its floating adder value are justified by the fact that had any party to the MOU felt the level by which the initial value (or subsequent values) could change was insufficient, no agreement would have been reached. IP Opening Br. at 18-19. The fact that three parties in this case have reached a settlement agreement on a particular market value or incremental additions to the market value is not evidence of the validity or reasonableness of the market value which is produced by the settlement, nor is it evidence of the validity of the beginning value or the limits on the floating adder. *See Business and Professional People for the Public Interest, et al., v. Illinois Commerce Commission*, (Ill. 1989), 555 N.E.2d 693 rejecting a Commission's order in part because it relied upon a settlement rather than evidence to approve a rate increase for a utility.

E. Determining Level of Marketing Activity

IP argues that determining the level of market activity is an important or key component of the floating adder concept. IP Opening Br. at 20-21. As noted above, IP fails to explain the exact relationship between market activity and value of power and energy. In addition, IP fails to explain how decreases in marketing activity justify the prevention of an increase in market value, which would have been justified by a decrease in switching statistics, assuming switching is a true indicator of market value, which it is not.

In this portion of its brief IP also discusses the role of Staff and the alternative to Staff involvement in the floating adder process. This issue was addressed in IIEC's opening brief and will not be reargued at this time. IIEC Opening Br. at 19. Staff has expressed similar concerns, including but

not limited to, the suggestion that its involvement in the process could be equivalent to an improper delegation of the Commission's tariff approval powers to the Staff. Staff Opening Br. at 29.

As part of IP's argument that determining the level of market activity is an important or key component of the floating adder concept, IP states that the "metric" used in both the RES Coalition proposal and the MOU is customer load that switches to or stays with RES supply. IP Opening Br. at 20. IP then describes the metric in footnote 14 of its brief. IP Opening Br. at 20. IIEC is concerned that IP does not understand its own proposal. IP references page 6 of its Exhibit 1.6 in the footnote. In that exhibit, IP represents the measure of switching threshold as a percentage of "eligible customer load." IP Ex. 1.6 at 6. However, elsewhere IP indicates the measurement is not based on "eligible customer load" (i.e., customer load eligible for delivery service) IP states:

"Switching activity shall be defined as the total annual kWh either switching to or staying on RES supply in the current publication period, as compared to the total annual kWh either switching to or staying on RES supply, switching to or staying on Rider PPO supply, or switching to utility Bundled Service in the same publication period as defined below:

- (a) Annual kWh switching to RES Supply, either from Bundled Service or Rider PPO.
- (b) Annual kWh whose Anniversary Date was within the publication period staying with RES Supply.
- (c) Annual kWh switching to Rider PPO supply, either from Bundled Service or RES Supply.
- (d) Annual kWh whose Anniversary Date was within the publication period staying with Rider PPO Supply.
- (e) Annual kWh whose Anniversary Date was within the publication period switching to Bundled Service, either from Rider PPO or RES

Supply.”

IP Exhibit 1.8, Rider TC - Page 1 of 2, Appendix 4 - Adder Calculation Methodology; IP Ex. 1.9 at 2nd and 3rd pages.

IP fails to explain the measurement methodology and how it will specifically lead to greater numbers of bundled service customers switching to delivery service. Rather, it appears only to consider RES supplied load as a fraction of load already on delivery service.

IIEC notes that throughout this definition, the measured percentages (i.e., those compared to the 33% and 66% triggers) will apparently fluctuate from period to period, depending on the amount of customer load with an anniversary date that falls within the prior two month window, even if there is no movement from PPO to RES supply or vice versa. This illogical result illustrates instability in a measurement IP claims is “just right”. IP Opening Br. at 8. In 2001, with no floating adder, the average percentage of RES load to delivery service load was about 60%.⁶ If the MOU had been in place in 2001, it is quite conceivable that any particular two month indicator could swing above or below the 66% floating adder reduction trigger, purely as a function of the period by period variation and not as an indicator of competitive activity (or lack thereof) or the reasonableness of the then-current floating adder.

IV. Multi-year Option Issues

IP argues, the multi-year option issues are significantly reduced in its case. IP Opening Br. at 22 - 21. IIEC respectfully disagrees. Under IP’s methodology, there is apparently a risk that there will be

⁶See Illinois Commerce Commission Annual Report to the General Assembly, April 2002. The 60% is calculated from numbers taken from figure 6 of the Commission’s Report. Percentage of Delivery Service customer usage on PPO in 2001 equals $(527.2 + 1,236.3)/(533.6 + 3,857.4) \times 100\% = 40\%$. Hence, the percentage of RES supplied customer usage in 2001 = $100\% - 40\% = 60\%$.

no multi-year option available to customers in the absence of data based on actual trades. *See* IP Opening Br. at 22-23; Blackburn Tr. 245.⁷ In regard to the single year market value option, IP established a hierarchy of data to use in the event insufficient data exists to establish off-peak forward prices used to calculate the single year market value. It proposes additions to the data hierarchy associated with the single year market value option. Blackburn Tr. 225. IP proposes to use the midpoints of bid and offer prices in the absence of actual off-peak trades to obtain off-peak prices. Blackburn Tr. 226. Thus, IP has made provision in its single year market value calculation for what happens in the absence of actual trades and trading data, in the calculation of market value. Peters Tr. 245. However, IP has made no such provision in the calculation of its multi-year market values. Peters Tr. 245. Therefore there is no assurance on a going forward basis that under IP's proposal there will be a multi-year market value option. Peters Tr. 245.⁸

Failure to establish a data hierarchy means that there is a distinct possibility that the multi-year option will be available on paper but not in reality.⁹ IP and other utilities should be compelled to develop a data hierarchy for the multi-year option similar to that used in the single year option in order to ensure its availability.

⁷ ComEd has also suggested that its multi-year option is limited to two years due to a lack of data on actual off-peak trades. ComEd Opening Br. at 25.

⁸Ameren does not believe a floating adder would be appropriate for its MVI. Ameren Opening Brief at 13. Ameren's reasoning is not clear, but its position could be based on the fact it will not collect a transition charge. This is exactly why all Ameren's proposals for modification of its MVI should be rejected at this time.

⁹However, IP's position in its Opening Brief is inconsistent with its testimony relating to its use of Platt's Energy Trader multi-year data which are available year round. *See* IIEC Opening Br. at 22-23; Blackburn Tr. 243-245.

Next IP argues, under its multi-year approach, it has made accommodations to permit most customers to be eligible to take the option during the January and February billing cycle. IP Opening Br. at 23. However, IP has failed to consider the fact that customers taking RES service have made contracts and commitments independent of IP, which may prevent them from taking advantage of the IP option, given the fact that it is available only one time each year. IP cites to Section 16-112(o) of the Act as support for its claim that it is not obligated to provide customers service under such circumstances. IP Opening Br. at 23. However, IP ignores the fact that Section 16-112(o) of the Act applies to long-term market value options offered in conjunction with the NFF process, not the market value index process which IP currently uses to determine market value. Also, IP overlooks the fact that Section 16-112(o) requires the utility to offer customers the option to get out of their long-term market value commitment. However, the IP tariff proposal in this case does not contain such a provision. IP cannot on the one hand claim the protection of Section 16-112(o) and at the same time deny customers the protections to which they are entitled under the same section. Therefore, while IIEC is not prepared to agree that IP is entitled under Section 16-112(o) to refuse to provide service to multi-year market value customers, if the Commission concludes that it is so permitted, then the Commission should compel IP to offer such customers the opportunity to get out of their long-term market value commitments.

Further, IP's interpretation of Section 16-112(o) is in conflict with other provisions of the statute which require IP to continue to offer this tariff service to customers until the service is declared competitive under Section 16-113 of the Act. 220 ILCS 5/16-113. IP is required to offer tariffed service to customers until the service is declared competitive under Section 16-113 or abandoned under Section 8-508. 220 ILCS 5/16-103(a).

Implementation of IP's position on this issue would undoubtedly have the effect of discouraging customers from taking the multi-year option. However these problems with IP's application of the statute could be avoided if the Commission adopts, with appropriate modifications, IP's proposal to provide service pursuant to Rider ISS to the multi-year market value customers, which experience a RES default.

IP argues that utilities are not required to offer multi-year market value options unless the NFF publishes values for multiple years.¹⁰ IP Opening Br. at 23. IIEC disagrees. Obviously the NFF has not calculated such values. Therefore Section 16-112(n) does not form the basis for the offering of the multi-year value in this case.

However, there are other provisions of Section 16-112 which indicate that the legislature contemplated the possibility that multi-year values would be determined on the basis of an MVI tariff. Thus, multi-year values would be a function of an exchange traded or other market index. IP claims that its multi-year approach is a function of such an index. *See* IP Opening Br. at 3.

Section 16-112(a) contains language which makes it clear that the legislature believed that the MVI tariff itself would produce multi-year values. It expressly states that in the event an MVI tariff “. . . does not establish market values for each of the years specified in the neutral fact-finder process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the neutral fact-finder process. . . .” will be used to determine market value. 220 ILCS 5/16-112(a). Therefore it is Section 16-112(a), not Section 16-112(n) which permits the establishment of an MVI tariff to develop multi-year market values.

¹⁰ComEd argues it is not required to offer the multi-year market value option at all. ComEd Opening Br. at 24.

IP argues that under Section 16-112(n) it could have required one and two year notice periods for the multi-year option. IP Opening Br. 23-24. IIEC disagrees. As noted above, Section 16-112(n) relates to a multi-year market value option associated with the NFF process. There are not NFF multi-year market value calculations. Therefore, Section 16-112(n) is not controlling.

In sum, IP has offered a multi-year option which, because of its failure to establish a data hierarchy, may be available in name only to customers, which fails to consider that customers must enter into contracts and make other supply commitments which will interfere with their ability to exercise the multi-year option if it is only offered one time a year. IP should be directed to establish a data hierarchy for the multi-year option. Even IP witnesses have testified that IP is indifferent to whether a customer chooses a multi-year option or the single year option. *See* IP Ex. at 16. Therefore, IP should be directed to offer the option more frequently than once a year.

A. Availability of Multi-year Contracts

IP also argues that its multi-year option is generally limited only by the availability of data necessary to calculate such a value. IP Opening Br. at 24. IIEC respectfully disagrees. It is true that IP did not take the sledgehammer approach of limiting the multi-year option to only 500 MW of load, taken by ComEd in this case. However, there are other circumstances, which will have the effect of practically limiting the availability of the multi-year option in the IP service territory. For example, under IP's tariff SC 24 customers must give one year notice to terminate SC 24 service. *See Illinois Power Company*, Ill.C.C. Dkt. No. 01-0423, Order at 123 (March 28, 2002). Therefore, an SC 24 customer with a service anniversary date of January 31 would have had to give notice of its intent to terminate service under SC 24 in order to take the multi-year option on Friday of last week, January 31, 2003.

Of course the customer would not know the multi-year values and transition charges until near the end of December, 2004. Such a customer would have the option to revoke its notice of termination of SC 24 service as long as it did so at least 60 days before the date the service was to terminate. Id. at 123. Therefore, an SC 24 customer giving notice of termination on January 31, 2003 could revoke its notice of termination on or about December 1, 2004. However, under the IP approach, a customer still would not know the multi-year market value until near the end of December, 2004.

In addition it is important to note that the multi-year option is not currently available. Therefore, existing SC 24 customers having a service anniversary date prior to the date the multi-year option is incorporated into IP's tariffs will not learn of the availability of the option and understand the steps necessary to be taken in order to exercise the option until it is too late for them to give the one year notice. Thus, for all intents and purposes, such customers under the IP proposal will not be able to take the option in 2004. This is because they could not meet the requirements to terminate service under SC 24 in order to actually take the option in January and February of 2004.

IP further limits the availability of the option. Customers under an IP competitive service contract or a special tariff contract will not be allowed to take the multi-year option (IP Opening Brief at 24), thereby further limiting the number of customers who will actually be able to make practical use of the option.

IP suggests that it has been liberal in making the multi-year option available to as many customers as possible and points to its decision to allow PPO customers to cancel their contract and take the multi-year option. IP Opening Br. at 25. IP takes a liberal approach only when it is in its self interest to do so. IP desires to move as many customers from the PPO option as possible. Therefore, IP has made

it as easy as possible for PPO customers to move to the multi-year option and is difficult as possible for all other customers to do so.

B. Length of Multi-year Contracts

IP states that under its proposed multi-year market value options, contracts will be either for two or three years depending on data availability. IP Opening Br. at 25. IIEC has described its position with regard to “data availability” in its discussion of IP’s multi-year market value option above. IP also argues that synchronization of the multi-year market value contracts to the end of the mandatory transition period (MTP) is another reason to allow a customer to enter a multi-year market value contract only in the January and February time periods of each year. IP Opening Br. at 25. IIEC respectfully disagrees.

The opportunity to recover transition charges ends on December 31, 2006 unless extended by the Commission upon petition by the utility. 220 ILCS 5/16-108(f). Once the transition charge recovery period ends, IP will no longer have the opportunity to recover transition charges regardless of the existence of a multi-year market value option which establishes multi-year market values for periods beyond December 31, 2006. Therefore, unless IP believes that it will be entitled, by reason of such a contract, to continue to collect transition charges from customers beyond the statutory time period, the fact that the multi-year contract may not correspond to the end of the transition charge recovery period is of no great significance. On the other hand, if IP does seek to extend the transition charge recovery period beyond December 31, 2006, as permitted in the statute, then the possibility that the multi-year option contracts may extend beyond December 31, 2006 would be beneficial, not harmful.

Finally, it should be noted that IP’s current single year market value option does not conform to the end of MTP. This is because five out of the six possible MVI cycles end at a point in time other than

the end of the calendar year. Yet IP has not suggested the single year option should be offered once per year. Again IP's reasoning in opposition to offering the multi-year option more than once per year is suspect and should be rejected.

D. Market Value Adder Based on Length of Contract

IP argues there should be no adder to market value based on the length of the multi-year market value option. IP Opening Br. at 26-27. IIEC has argued in support of such an adder. IIEC Opening Br. at 24-26. It will not repeat those arguments. However, IP takes the position that if its MOU is adopted issues related to the use of an adder based on the length of the multi-year market value contract are moot. IP Opening Br. at 26. The issue is not moot.

IP also argues that IIEC and the RESs argued for an adder recognizing the value of the multi-year option to the utility on the assumption that there would be certainty of load loss for an extended period as a result of the implementation of the multi-year option. This is because under IP's proposal for the multi-year option, IP would be relieved of the obligation to provide any type of electric service to the multi-year customer. IP Opening Br. at 27. IP goes on to suggest that because it could be providing service under Rider ISS to multi-year customers, the premise for the IIEC and RES adjustment disappears. IP Opening Br. at 27.

However, as IIEC witness Stephens noted, IP already serves single year market value customers under Rider ISS and other tariff rates in the event of a supplier default and the inability of the customer to secure service elsewhere. However, IP reserves no capacity for load served by RESs. IP Ex. 2.1 Rev. at 38. Therefore there is no reason to believe IP would reserve capacity to serve the load of multi-year market value customers. Stephens Tr. 642. In fact, today, IP allows a single year customer served

by an RES to return to bundled service, PPO service and Rider ISS service. Yet IP reserves no capacity for the load associated with these customers. Under its proposal the multi-year market value customer would be prevented from returning to bundled or PPO service (IP may allow the customer to take ISS service). However, IP argues implicitly it will reserve capacity for this load. IP's position defies logic. It does not reserve capacity for load that can return but claims it reserves capacity for load that cannot return. To the extent Rider ISS is already compensatory (as has been found by the Commission), a "beefed up" version of Rider ISS proposed by IP would be more than compensatory. *See Illinois Power Company*, Ill.C.C. Dkt. 01-0423 Order (March 28, 2002) at 105, where the Commission stated: ". . . given the pricing provisions for ISS adopted in this order, IP will have a reasonable opportunity to recover the cost of providing ISS and, as a result, will not be harmed by this provision of Rider ISS."

IP also criticizes IIEC's proposal for adders to the multi-year market value suggesting that IIEC only argues for those adders that do not affect the eligibility for customers for the PPO. IP Opening Br. at 27. The fact of the matter is that IIEC has not objected to adjustments which will have the effect of increasing market value for both customers electing the PPO and customers choosing RES service. *See Blackburn Tr. 57*. IIEC supports such changes as long as they are justified in the record.

E. Limitation on Load Eligible for Multi-year TC Contracts

ComEd continues to propose that its multi-year market value option be limited to 500 megawatts of total load. ComEd Opening Br. at 27. IIEC addressed this issue in its Opening Brief. IIEC Opening Br. at 27-28. ComEd raises no new arguments in relation to this issue. Therefore, IIEC will make no further response.

F. Implementations of RES Default During Multi-year TC Contract

IP argues that the Act clearly provides the implications for RES default during a multi-year TC contract. IP Opening Br. at 28-29. In so doing, it suggests that it is not required to offer tariff service to such customers under Section 16-112(o). IIEC has previously responded to this argument. *See* Section IV.

In spite of its statutory interpretation, IP states that it would be willing to offer Rider ISS service to multi-year market value customers who experience RES default. IP is willing to provide such service at the rates charged under Rider ISS plus 10%. IP also suggests that at the end of the initial period for service under Rider ISS, IP will place any customer, which has not secured alternative supply permanently on Rider ISS or the applicable tariffed rate. IP Opening Br. at 29. IP witnesses have testified that IP will make this decision on the basis of what is in the best economic interest of IP. Blackburn Tr. 215.

IP concludes that this approach is reasonable. It reasons that if a customer cannot find a willing RES to serve it at less than the higher of either IP's bundled rate or Rider ISS plus 10%, it is strong evidence the market price for serving customers is higher than IP's requested rate for a service IP is not required by statute to provide. IP Opening Br. at 29. IIEC disagrees. The absence of a willing RES to serve the customer could be strong evidence that there are in fact no RESs available to serve the customer in the IP service territory in the first instance. It could also be strong evidence that there is no economically reliable RES available to serve the customers. Finally, because RESs are not obligated to serve customers, it could also be evidence that RESs were unable or unwilling to serve the customer for reasons which have nothing to do with the customer or with market value.

V. Time Period and TC Administration Issues

F. Other

The RES Coalition recommends the Commission require ComEd to make individual CTCs available on the PowerPath website. RES Coalition Opening Br. at 64. IIEC believes end-use customers would prefer to have the right to make such information available to RESs on a case-by-case basis without having such information posted on ComEd's PowerPath website. Posting this information in such location would be acceptable if customers are given the opportunity to block access to it via the website as they are now able to block access to historic usage data on the website.

VII. Conclusion

IIEC requests the Commission adopt its recommendations and positions as set out herein and in its Opening Brief.

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Respectfully submitted,

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